

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641
August 9, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson,

On July 13, 2011, the Committee on Energy and Commerce voted to report H.R. 2273. This legislation has never been subject to a hearing. Therefore, I am writing to request technical assistance in order to better understand the legal effects of the legislation prior to floor consideration.

EPA has proposed alternative regulatory approaches under subtitle C and D of RCRA to ensure the safe disposal of coal combustion residuals (CCR). Both of EPA's proposals include requirements to address the risks of wet impoundment failures, dust from CCR landfills, groundwater contamination, and other potential risks. The requirements set out in the subtitle D proposed rule include fugitive dust controls such as wet conditioning, weekly inspections of the structural integrity of wet impoundments, and detection and assessment monitoring of groundwater monitoring targeting the constituents of CCRs. Wet impoundments accepting CCR would be required to retrofit with liners to prevent groundwater contamination or close. According to the proposed rule preamble, those criteria were developed to protect human health and the environment from the risks associated with CCR disposal.

H.R. 2273 applies existing criteria developed for municipal solid waste, along with a list of additional requirements, to the disposal of CCR. H.R. 2273 also establishes a new regulatory structure for CCR disposal. The new regulatory structure differs from the system of prior approval for state programs that has long applied to the disposal of municipal solid waste.

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This legislation is likely to be considered by the House of Representatives in the near future. In order to provide members with information about the implementation and consequences of this legislation, I would appreciate your assistance with the following questions:

Appropriate Criteria: Existing criteria in place for municipal solid waste disposal were developed to protect human health and the environment from the risks associated with disposal of municipal solid waste. EPA's regulatory proposals sought to develop specific criteria to protect human health and the environment from the risks associated with disposal of CCR. Why is this important, and does H.R. 2273 instruct EPA or the states to develop protective criteria for CCR disposal?

Legal Standard: Under the existing program for municipal solid waste, state permit programs are required to meet a legal standard of protection. Specifically, the programs must "protect human health and the environment." Why is this important, and does H.R. 2273 require state permit programs for CCR to meet a legal standard of protection? If so, what is that standard?

Regular Inspections: EPA's regulatory proposals would require periodic inspections of wet impoundments. Why is this important and does H.R. 2273 require wet impoundments to be periodically inspected?

Dust Control: EPA's regulatory proposals would require CCR landfills to control fugitive dust by covering or managing CCR to control wind dispersal, wetting CCR to control wind dispersal, or requiring storage in tanks or buildings. Why is this important and does H.R. 2273 require dust control?

Groundwater Monitoring: EPA's regulatory proposals would require groundwater monitoring to detect and assess contamination with constituents specific to CCRs. The list of constituents proposed to be required to be monitored during detection monitoring would be boron, chloride, conductivity, fluoride, pH, sulphate, sulfide, and total dissolved solids. The constituents proposed to be required to be monitored during assessment monitoring would be aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, chloride, chromium, copper, fluoride, iron, lead, manganese, mercury, molybdenum, pH, selenium, sulphate, sulfide, thallium, and total dissolved solids. Why is this important and does H.R. 2273 require detection and assessment monitoring of these constituents?

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Impoundment Volume: EPA's subtitle D proposal would require that wet impoundments be designed for the maximum volume of CCR that will be impounded. Why is this important and would H.R. 2273 require impoundments to be designed for the maximum volume of CCR they will contain?

Operating Criteria: EPA's regulatory proposals would require wet impoundments to meet operating criteria based on the long-standing Mine Safety and Health Administration requirements. These operating criteria address risks posed by the day-to-day operation of wet impoundments, such as runoff from impoundments. Why is this important and does H.R. 2273 apply those or other operating criteria?

Review of State Programs: Under the existing program for municipal solid waste, the Administrator is required to review state permit programs and disapprove inadequate programs. Why is this important and does H.R. 2273 include such a requirement?

Notification of Unneeded Requirements: H.R. 2273 authorizes a state to decline to apply one or more of the listed requirements, if the state determines that the requirements are not needed. Notification of that determination would be provided to the EPA along with the state's required certification. Does H.R. 2273, as reported by the Committee, require a state to notify EPA or the public if it decides not to implement a requirement after its certification is filed?

Legal Standard for EPA in Non-Implementing States: If EPA implements a CCR permit program within a state, would H.R. 2273 require that federal program to meet any legal standard of protection?

EPA Authority in Non-Implementing States: H.R. 2273 explicitly preserves the existing authority of states to establish requirements for CCR disposal beyond those listed in the legislation. When EPA is the implementing agency, does H.R. 2273 authorize EPA to establish requirements beyond those listed in the legislation?

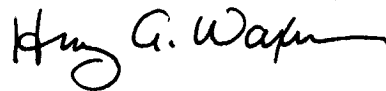
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I request a response to these questions as soon as possible, and no later than Friday, August 26, 2011. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Henry A. Waxman
Ranking Member